

REMARKS

Claims 1, 4, 5 and 6 are pending and stand ready for further action on the merits.

Issues Under 35 U.S.C. §102(b)

Claims 1-4 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by Brandon et al., U.S. 5,766,389. Applicants respectfully traverse the rejection.

As the Examiner will recall, Applicants argued that the present method is patentably distinct from the method of Brandon et al., since Brandon et al. fail to teach or suggest simultaneously cutting (a) printed continuous member and (b) a continuous absorbent core, as presently claimed. This position is supported by the fact that the absorbent members "32" are precut prior to being joined with the continuous members "66" and "54" of Brandon et al.

However, the Examiner has maintained the rejection stating that element "92" of Brandon et al. is an "absorbent member". See section 3 on page 3 of the Office Action.

Applicants respectfully submit that the Examiner has misconstrued the teachings of Brandon et al. in finding that element "92" is an "absorbent member," as presently claimed. It is clear from column 12, lines 47-58 of Brandon et al., that element "92" is bonded to the liquid impermeable barrier "66".

Element "92" is an optional layer which gives the outer covering of the training pants a cloth-like texture. Brandon et al. teach at column 12, lines 65-67 that the layer "92" is a non-woven web, such as a spun bond polypropylene web having a basis weight of about 20 g/m².

The issue is whether this spun bond polypropylene web would be considered by a skilled artisan to be an "absorbent member," as presently claimed. The fact that element "92" is not a material for an absorbent material is clear from the following points:

- (a) it is clear from the disclosure of Brandon et al. that element 92 covers the liquid-impermeable layer 66 covering the absorbent member 32 thereby providing the outer cover of the pants with cloth-like texture;
- (b) it is described in column 10, lines 60-64 and column 11, lines 14-16 of Brandon et al. that the tissue-wrapped absorbent 46 is cut into separate pieces by means 48 to form absorbent pads 32; and
- (c) it is described in column 12, lines 56-58 of Brandon et al. that the element "92" can be eliminated in some product designs. Since an absorbent member cannot be eliminated from an absorbent member, it is clear that the element "92" is not an absorbent member.

Furthermore, as mentioned above, element "92" is formed of spun-bond polypropylene web and polypropylene is known to be a *hydrophobic* fiber. There is no teaching or suggestion in Brandon

et al. to subject the fiber or its web constituting the spun-bond polypropylene web to a hydrophilic treatment. Therefore, it is considered that the web of Brandon et al. must be hydrophobic. Clearly the skilled person in the art would not be motivated to use a hydrophobic web for an absorbent member of an absorbent article.

According to MPEP §2131, a *prima facie* case of anticipation cannot be said to exist unless all of the elements of the application claims are either taught or suggested in the prior art reference. As can be seen from the above discussion, element "92" of Brandon et al. is not a "absorbent member" as described in the present claims. Accordingly, Brandon et al. fail to teach or suggest simultaneously cutting (a) a printed continuous member and (b) a continuous absorbent core, as presently claimed. Since all of the elements of the present claims are neither taught nor suggested by Brandon et al., withdrawal of the rejection is respectfully requested.

Information Disclosure Statement (IDS)

On February 21, 2002, Applicants filed an IDS which listed U.S. 4,323,069. It is clear from the attachment to the Office Action mailed February 12, 2003 (paper 10) that the Examiner has considered this document. However, the Examiner has not indicated as such on a PTO-1449 form. Accordingly, Applicants enclose herewith a Supplemental PTO-1449 form listing U.S. 4,323,069.

Applicants respectfully request that the Examiner initials and signs the enclosed Supplemental PTO-1449 form and encloses it with the next communication.

In addition, Applicants timely filed an IDS on November 5, 2003. The Examiner is respectfully requested to forward a signed copy of the PTO-1449 form which was enclosed with the November 5, 2003 IDS in the next communication.

Conclusion

In view of the above comments, Applicants respectfully submit that the claims are in condition for allowance. A notice to such effect is earnestly solicited.

If the Examiner has any questions concerning this application, he is requested to contact Garth M. Dahlen, Ph.D., Esq., (#43,575) at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

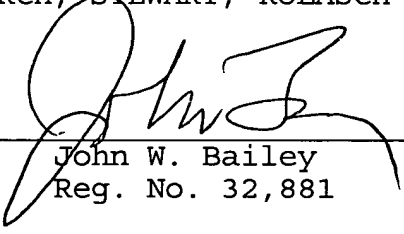
Serial No.: 09/889,847

overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


John W. Bailey
Reg. No. 32,881


JWB/GMD/gh

P. O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Enclosed: Supplemental PTO-1449 form listing U.S. 4,323,069